



Linda S. Adams
Secretary for
Environmental
Protection

California Regional Water Quality Control Board

Central Coast Region Enforcement Unit



Arnold Schwarzenegger
Governor

Internet Address: <http://www.waterboards.ca.gov/centralcoast>
895 Aerovista Place, Suite 101, San Luis Obispo, California 93401-7906
Phone (805) 549-3147 • FAX (805) 543-0397

August 31, 2010

**CERTIFIED MAIL 7008 1140 0003 4708 9435
RETURN RECEIPT REQUESTED**

Terry Lambeth
San Simeon Community Services District
111 Pico Avenue
San Simeon, CA 93452

also via email: tlambeth@sansimeoncsd.com

**SETTLEMENT AGREEMENT AND STIPULATION FOR ADMINISTRATIVE CIVIL
LIABILITY ORDER AND ORDER NO. R3-2010-0033, SAN SIMEON COMMUNITY
SERVICES DISTRICT, SAN SIMEON, SAN LUIS OBISPO COUNTY, WDID# 3 40 011
0001**

Dear Mr. Lambeth:

Please find attached for San Simeon Community Services District's (District) review and response *Settlement Agreement and Stipulation for Administrative Civil Liability Order, Order No. R3-2010-0033* (Order). In response to the District letter dated December 14, 2009, the Central Coast Water Board enforcement staff concurs with the District's request to resolve the alleged violations by directing \$6,000 to the Tertiary Treatment Facilities Construction Project as a Supplemental Environmental Project pursuant to California Water Code section 13385. Please review the proposed settlement agreement within the Order and indicate the District's agreement by signing and dating in the spaces provided on page 10, and returning it **by September 21, 2010.**

Upon receipt of the District's signed agreement, Central Coast Water Board enforcement staff will publish on its website a 30-day notice of the proposed resolution. If no comments are received within the 30-day period, and unless there are new material facts that become available to the Central Coast Water Board, the Executive Officer will execute the Order as a stipulated order assessing the uncontested mandatory minimum penalty amount pursuant to Water Code section 13385.

If, however, significant comments are received in opposition to the settlement, the agreement may be withdrawn and a hearing for the Central Coast Water Board to consider the matter may be publicly noticed. Central Coast Water Board enforcement staff will provide the District with further information as directed by the Executive Officer.

California Environmental Protection Agency



Recycled Paper

If the District has questions on this matter, please contact Todd Stanley **at (805) 542-4769, or tstanley@waterboards.ca.gov**, Harvey Packard at (805) 542-4639, or Central Coast Water Board enforcement staff attorney, Yvonne West, at (916) 341-5445.

Sincerely,



Michael J. Thomas
Assistant Executive Officer

Enclosure: Settlement Agreement and Stipulation for Administrative Civil Liability
Order No. R3-2010-0033, with attached Exhibits A and B

cc:

William Schwarz (via email)
General Manager
San Simeon Community Services District
wschwarz@sansimeoncsd.com

Michael Thomas (via email)
Assistant Executive Officer
Central Coast Water Board

Yvonne West (via email)
Staff Counsel
Office of Enforcement
State Water Resources Control Board

Matt Keeling (via email)
Lead Technical Staff
Central Coast Water Board

K:\EPLs\San Simeon 2009\San Simeon EPL ACLO-Stlmnt 2010-0033 trans ltr.doc



**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL COAST REGION**

895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401

In the matter of:)	
)	Order No. R3-2010-0033
San Simeon Community)	Settlement Agreement and Stipulation
Services District)	For Administrative Civil Liability Order;
)	Order
)	

INTRODUCTION:

This Settlement Agreement and Stipulation for Administrative Civil Liability, Order (Stipulation) is entered into by and between the Enforcement Staff of the Central Coast Regional Water Quality Control Board (Enforcement Staff), and San Simeon Community Services District (Settling Respondent) (collectively Parties) and is presented to the Executive Officer of the Central Coast Regional Water Quality Control Board (Central Coast Water Board) for adoption as an Order by settlement, pursuant to Government Code section 11415.60 and pursuant to the authority delegated to the Executive Officer by the Water Board (Order).

The Enforcement Staff has alleged violations against the Settling Respondent as set forth in Expedited Payment Letter No. R3-2009-0071 dated October 21, 2009, which is attached hereto as Exhibit "A" (Expedited Payment Letter).

RECITALS:

1. Pursuant to California Water Code Section 13385, the Central Coast Water Board shall impose a minimum civil liability of three thousand dollars (\$3,000) for each violation identified in the Expedited Payment Letter for a total minimum liability of \$6,000.
2. California Water Code section 13385(l)(1) states:
 - (1) In lieu of assessing penalties pursuant to subdivision (h) or (i), the state board or the regional board, with the concurrence of the discharger, may direct a portion of the penalty amount to be expended on a supplemental environmental project in accordance with the enforcement policy of the state board. If the penalty amount exceeds fifteen thousand dollars (\$15,000), the portion of the penalty amount that may be directed to be expended on a supplemental environmental project may not exceed fifteen thousand dollars (\$15,000) plus 50 percent of the penalty amount that exceeds fifteen thousand dollars (\$15,000).

3. To resolve by consent and without further administrative proceedings certain alleged violations of California Water Code (CWC) section 13385 set forth in the Expedited Payment Letter, the Parties have agreed to the imposition of \$6,000 in liability against the Settling Respondent. Settling Respondent agrees to direct the entire \$6,000 to fund the Supplemental Environmental Project (SEP) as described in more detail below in Paragraph 9.

THE CENTRAL COAST WATER BOARD ENFORCEMENT STAFF AND SAN SIMEON COMMUNITY SERVICES DISTRICT, HEREBY STIPULATE AS FOLLOWS:

4. **MATTERS ADDRESSED BY STIPULATION:** Upon adoption by the Central Coast Water Board as an Order, whether directly or through the authority delegated to its Executive Officer, this Stipulation represents a final and binding resolution and settlement of all claims, violations or causes of action alleged in the Expedited Payment Letter or which could have been asserted based on the specific facts alleged in the Expedited Payment Letter against San Simeon Community Services District, and its subsidiaries, corporate parents, affiliates, successors, heirs, assigns, and their officers, directors, partners, employees, representative agents, and attorneys, as of the effective date of the Expedited Payment Letter. The provisions of this Paragraph are expressly conditioned on the Settling Respondent's full satisfaction of the obligations described herein.
5. **WAIVER OF RIGHT TO PETITION:** The Parties covenant and agree that they will not contest the Stipulation and Order before the Central Coast Water Board, the State Water Resources Control Board (State Water Board), or any court.
6. **SUFFICIENCY OF PROCESS:** The Parties agree that the procedure that has been adopted for the approval of the settlement by the Parties, as reflected in this Stipulation and Order, will be adequate. In the event procedural objections are raised prior to this Stipulation becoming effective, the Parties agree to meet and confer concerning any such objections, and may agree to revise or adjust the procedure as necessary or advisable under the circumstances.
7. **SUPPLEMENTAL ENVIRONMENTAL PROJECT DEFINITIONS:**

"Cleanup and Abatement Account" – the State Water Pollution Cleanup and Abatement Account.

"Designated Water Board Representative" – the representative from the Central Coast Water Board responsible for oversight of the SEP. This person is Matthew Keeling.

"Enforcement Coordinator: - the person on the Central Coast Water Board staff who is responsible for enforcement coordination. This person is Harvey Packard.

"Milestone Requirement" – a requirement with an established time schedule for meeting/ascertaining certain identified measurements of completed work as set forth in the Description of the SEP below.

"SEP Completion Date" – July 25, 2012, the date by which the SEP will be completed in its entirety.

8. ADMINISTRATIVE CIVIL LIABILITY AND COSTS OF ENFORCEMENT:

A. Total Civil Liability

Settling Respondent shall be subject to administrative civil liability in the total amount of \$6,000, the total of which will be directed to fund the SEP, and will be treated as a Suspended Administrative Civil Liability (Suspended Liability).

B. Funding of Special Environmental Projects

The Settling Respondent agrees to direct the entire administrative civil liability amount of \$6,000 to fund the SEP project (SEP Amount). Settling Respondent shall submit proof that the SEP Amount has been deposited in the Tertiary Treatment Facilities Construction Account within 30 days of the effective date of the Order. The Suspended Liability shall be deemed satisfied once the SEP is completed by the Settling Respondent in accordance with the SEP description in Paragraph 9 below .

- 9. DESCRIPTION OF THE SEP:** The Settling Respondent has directed \$136,500 in past mandatory minimum penalties towards implementation of a tertiary treatment facility construction SEP, pursuant to Central Coast Water Board Orders No. R3-2005-0032, No. R3-2005-0120, and No. R3-2006-0102. Subsequent to issuing the aforementioned orders, the Water Board authorized an extension of the deadline for the construction of the tertiary treatment facility until July 25, 2012, and confirmed that the construction of a smaller scale tertiary treatment facility will satisfy the SEP obligations in these orders. This Stipulation and Order directs an additional \$6,000 in suspended liability to the tertiary treatment facility construction

SEP. The SEP Amount must be utilized solely for construction of tertiary treatment facilities, not planning, design or permitting.

The project is designed to treat a portion of the treatment plant's effluent to improve water quality, provide for immediate and future beneficial use of the water, and offset demand for potable water. The project will treat a side-stream of secondary treated effluent from the existing plant and return the reclaimed water to the existing chlorinated contact chamber for blending with secondary treated effluent. The Settling Respondent has commissioned a feasibility study to evaluate the viability of such a project. The scope of work and budget for that feasibility study are described in Exhibit B. As of the preparation of this Stipulation, there is no scope of work or budget for actual construction of the tertiary treatment facility. The Settling Respondent must prepare and submit to the Water Board for review and approval, a scope of work, schedule for implementation, and a budget for the tertiary treatment facility construction SEP by the close of business on November 30, 2010. The tertiary treatment facilities must be completed by July 25, 2012. The deadlines for submission of a scope of work, schedule for implementation, and budget, as well as the deadline for completion of construction of the tertiary treatment facility are Milestone Requirements.

10. REPRESENTATIONS AND AGREEMENTS REGARDING COMPLIANCE PROJECTS:

A. Settling Respondent Performing SEP

i. Representation of the Settling Respondent

As a material consideration for the Central Coast Water Board's acceptance of this Stipulation, the Settling Respondent represents that it will utilize the funds outlined in Paragraph 9 to implement the SEP in accordance with the approved schedule for implementation that is required to be submitted and approved in accordance with Paragraph 9. The Settling Respondent understands that its promise to implement the project, in its entirety and in accordance with the schedule for implementation, is a material condition of this settlement of liability between the Settling Respondent and the Water Board.

ii. Agreement of Settling Respondent to Implement SEP

The Settling Respondent represents that: 1) it will spend the SEP Amount as described in this Stipulation; 2) it will provide certified, written reports to the Central Coast Water Board consistent with the terms of this Stipulation and Order detailing the implementation of the SEP; and 3) Settling Respondent will

guarantee implementation of the compliance project by remaining liable for \$6,000 of suspended administrative liability until the SEP is completed and accepted by the Water Board in accordance with the terms of this Stipulation. The Settling Respondent agrees that the Water Board has the right to require an audit of the funds expended by it to implement the compliance project. Settling Respondent shall permit inspection of the SEP by the Water Board staff at any time without notice.

11. **PUBLICITY:** Whenever the Settling Respondent or its agents or subcontractors publicizes one or more elements of the SEP, they shall state in a **prominent manner** that the project is being undertaken as part of the settlement of an enforcement action by the Central Coast Water Board against the Settling Respondent.
12. **SUBMITTAL OF PROGRESS REPORTS:** Settling Respondent shall provide Semi-annual reports¹ of progress to the Designated Water Board Representative every 31st of January and July each year after the Order is adopted and continuing until the SEP is completed. Completion of the SEP project shall be documented by a post-project completion report and accounting of expenditures to be provided to the Designated Water Board Representative by the close of business on September 25, 2012. The Settling Respondent shall copy the Division of Financial Assistance of the State Water Board on all submittals of periodic and final progress reports at the mailing and/or electronic mailing addresses shown below.

State Water Resources Control Board
Attention: CAA Unit Manager
Division of Financial Assistance
1001 I Street, 17th Floor
Sacramento, CA 95814

Or by electronic mail to the same attention at:

caa@waterboards.ca.gov

¹ The State Water Board Policy on Supplemental Environmental Projects, effective February 3, 2009, Section G.2, establishes the minimum reporting frequency as quarterly. Water Board Enforcement Staff, however, recommends maintaining the less frequent semi-annual reporting established by Water Board in its previous enforcement actions and approval of the Settling Respondent's SEP, which originated before the SEP Policy.

13. AUDITS AND CERTIFICATION OF ENVIRONMENTAL PROJECT:

A. Certification of Expenditures

On or before September 25, 2012, the Settling Respondent shall submit a certified statement by a responsible corporate official representing the Settling Respondent documenting the expenditures by Settling Respondent during the SEP completion period for the SEP. In making such certification, the official may rely upon normal company project tracking systems that capture employee time expenditures and external payments to outside vendors such as environmental and information technology contractors or consultants. Settling Respondent shall provide any additional information requested by the Central Coast Water Board staff which is reasonably necessary to verify SEP expenditures. The certification need not address any costs incurred by the Water Board for oversight.

B. Certification of Performance of Work

On or before September 25, 2012, the Settling Respondent shall submit a report, submitted under penalty of perjury, stating that the SEP has been completed in accordance with the terms of this Stipulation. Such documentation may include photographs, invoices, receipts, certifications, and other materials reasonably necessary for the Central Coast Water Board to evaluate the completion of the SEP and the costs incurred by the Settling Respondent.

C. Certification that Work Performed on SEP Met or Exceeded Requirements of CEQA and other Environmental Laws [Where Applicable]

On or before beginning construction of the tertiary treatment SEP, the Settling Respondent shall submit documentation, if necessary, under penalty of perjury, stating that the SEP meets or exceeds the requirements of the California Environmental Quality Act (CEQA), if applicable, and or other environmental laws. The Settling Respondent shall, before the SEP construction begins, consult with other interested State Agencies regarding potential impacts of the SEP. Other interested State Agencies include, but are not limited to, the California Department of Fish and Game. To ensure compliance with CEQA where necessary, the Settling Respondent shall provide the Central Coast Water Board with the following documents from the lead agency:

- i. Categorical or statutory exemptions;
- ii. Negative Declaration if there are no potentially "significant" impacts;

- iii. Mitigated Negative Declaration if there are potentially "significant" impacts but revisions to the project have been made or may be made to avoid or mitigate those potential significant impacts;
- iv. Environmental Impact Report (EIR) if there are "significant" impacts.

D. Third Party Audit

In addition to the certification, upon completion of the SEP and at the discretion of the Designated Water Board Representative, Settling Respondent, at its sole cost, shall submit a report prepared by one or multiple independent third parties acceptable to the Central Coast Water Board staff providing such parties' professional opinion that Settling Respondent has expended money in the amounts claimed by the Settling Respondent. Such information shall be provided to the Designated Water Board Representative within three (3) months of the completion of the Settling Respondent's SEP obligations. The audit need not address any costs incurred by the Water Board for oversight.

14. **CENTRAL COAST WATER BOARD ACCEPTANCE OF COMPLETED SEP:** Upon the Settling Respondent's satisfaction of its obligations under this Stipulation, the completion of the SEP and any audits, the Designated Water Board Representative, with notice to the regional Enforcement Coordinator, shall request that the Central Coast Water Board issue a "Satisfaction of Order." The issuance of the Satisfaction of Order shall terminate any further obligations of the Settling Respondent under this Stipulation.
15. **FAILURE TO EXPEND ALL SUSPENDED ADMINISTRATIVE CIVIL LIABILITY FUNDS ON THE APPROVED SEP:** In the event that Settling Respondent is not able to demonstrate to the reasonable satisfaction of the Central Coast Water Board staff that it has spent the entire SEP Amount for the completed SEP, the Settling Respondent shall pay the difference between the Suspended Liability and the amount Settling Respondent can demonstrate it actually spent on the SEP, as an administrative civil liability. The Discharger shall pay the administrative liability within 30 days of its receipt of notice of the Water Board's determination that the Discharger has failed to demonstrate that the entire SEP Amount has been spent to complete the SEP project.
16. **FAILURE TO COMPLETE THE SEP:** If the SEP is not fully implemented by the SEP Completion Date required by this Stipulation or there has been a material failure to satisfy a Milestone Requirement, the Designated Water Board Representative shall issue a Notice of Violation. As a consequence, Settling Respondent shall be liable to pay the entire Suspended Liability or, some portion thereof less the value of the completion of any Milestone

Requirements. Unless otherwise ordered, Settling Respondent shall not be entitled to any credit, offset, or reimbursement from the Central Coast Water Board for expenditures made on the SEP prior to the date of the Notice of Violation. The amount of the Suspended Liability owed shall be determined via a "Motion for Payment of Suspended Liability" before the Water Board. Upon the Water Board's determination of the amount of the Suspended Liability assessed, the amount owed shall be paid to the State Water Board Cleanup and Abatement Account within thirty (30) days after the service of the Water Board's determination. In addition, the Settling Respondent shall be liable for the Water Board's reasonable costs of enforcement, including but not limited to legal costs and expert witness fees. Payment of the assessed amount will satisfy the Settling Respondent's obligations to implement the SEP.

17. **CENTRAL COAST WATER BOARD IS NOT LIABLE:** Neither the Central Coast Water Board members nor the Water Board staff, attorneys, or representatives shall be liable for any injury or damage to persons or property resulting from acts or omissions by Settling Respondent its directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Stipulation, nor shall the Water Board, its members or staff be held as parties to or guarantors of any contract entered into by Settling Respondent, its directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Stipulation.

The Settling Respondent covenants not to sue or pursue any administrative or civil claim or claims against the Water Board, or its officers, employees, representatives, agents, or attorneys arising out of or relating to any matter expressly addressed by the Expedited Payment Letter, this Stipulation and Order, or the SEP.

18. **NO THIRD PARTY RIGHTS:** Nothing in this Stipulation shall be deemed to create any rights in favor of, or to inure to the benefit of, any third party or parties, or to waive or release any defense or limitation against third party claims.
19. **EXTENSION MUST BE IN WRITING:** The Central Coast Water Board Executive Officer may extend any of the due dates in this Stipulation upon the joint request of the Parties. Such extensions must be in writing.
20. **EFFECTIVE DATE:** The Effective Date of this Stipulation shall be the date on which the Order is executed by the Executive Officer on behalf of the Central Coast Water Board.
21. **PRESERVATION OF ENFORCEMENT DISCRETION:** This Stipulation relates only to administrative civil liability for violations that were alleged in

the Expedited Payment Letter. The Central Coast Water Board and its Executive Officer reserve all rights to take additional enforcement actions, including without limitation the issuance of administrative civil liability complaints or orders for violations that occur after the date on which the Assistant Executive Officer signed the Expedited Payment Letter.

22. **IF ORDER DOES NOT TAKE EFFECT:** In the event that this Stipulation does not take effect because it is vacated in whole or in part by the State Water Board or a court, the Parties acknowledge that they expect to proceed to a contested evidentiary hearing before the Central Coast Water Board to determine whether to assess administrative civil liabilities for the underlying alleged violations, unless the Parties agree otherwise. The Parties agree that all oral and written statements and agreements made during the course of settlement discussions will not be admissible as evidence in the hearing. The Parties also agree to waive any and all objections related to their efforts to settle this matter, including, but not limited to: 1) objections related to prejudice or bias of any of the Water Board members or their advisors and any other objections that are premised in whole or in part on the fact that the Water Board members or their advisors were exposed to some of the material facts and the Parties' settlement positions, and therefore may have formed impressions or conclusions, prior to conducting any contested evidentiary hearing on the alleged violations in this matter; or 2) laches or delay or other equitable defenses based on the time period that the order or decision by settlement may be subject to administrative or judicial review.
23. **AUTHORITY TO BIND:** Each person executing this Stipulation in a representative capacity represents and warrants that he or she is authorized to execute this Order on behalf of and to bind the entity on whose behalf he or she executes the Order.
24. **INTERPRETATION:** This Stipulation shall not be construed against the party preparing it, but shall be construed as if the Parties jointly prepared it and any uncertainty and ambiguity shall not be interpreted against any one party.
25. **MODIFICATION:** This Stipulation shall not be modified by any of the Parties by oral representation made before or after the execution of this Order. All modifications must be made in writing and approved by the Central Coast Water Board Executive Officer.
26. **COUNTER SIGNATURES:** This Stipulation may be executed by the parties and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one document.

IT IS SO STIPULATED²

Michael J. Thomas
Assistant Executive Officer
On behalf of the Central Coast Water Board Enforcement Staff

Representative for _____ Date _____
San Simeon Community Services District

Printed Name of Representative

Title of Representative

² The final version of this document may include more than one page with the same page number to accommodate the various executing signatures.

HAVING CONSIDERED THE ALLEGATIONS DESCRIBED ABOVE AND THE PARTIES' STIPULATIONS, THE CENTRAL COAST WATER BOARD, BY AND THROUGH ITS EXECUTIVE OFFICER, FINDS THAT:

27. Issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code section 21000 et seq.), in accordance with sections 15061(b)(3) and 15321(a)(2), of Title 14 of the California Code of Regulations.
28. In adopting this Order, the Executive Officer has considered all the factors prescribed in California Water Code section 13327 and 13385(e). The Executive Officer's consideration of these factors is based upon information and comments provided by the Parties and by members of the public, and finds that settlement of this matter is in the best interest of the People of the State.
29. Fulfillment of the Discharger's obligations under the Order constitutes full and final satisfaction of any and all liability for each claim in the Expedited Payment Letter and Paragraph 4 in accordance with the terms of the Order.

IT IS HEREBY ORDERED, pursuant to section 13323 of the California Water Code and section 11415.60 of the California Government Code and on behalf of the California Central Coast Regional Water Quality Control Board.

Roger W. Briggs
Executive Officer
Central Coast Regional Water Quality Control Board

Date



Linda S. Adams
Secretary for
Environmental Protection

**California Regional Water Quality Control Board
Central Coast Region
Enforcement Unit**

895 Aerovista Place, Suite 101, San Luis Obispo, California 93401-7906
(805) 549-3147 • Fax (805) 543-0397
<http://www.waterboards.ca.gov/centralcoast>



Arnold Schwarzenegger
Governor

October 21, 2009

Charlie Grace
San Simeon WWTP
111 Pico Avenue
San Simeon, CA 93452

Via Certified Mail
7008 1140 0003 4708 7127

**NO. R3-2009-0071, OFFER TO PARTICIPATE IN EXPEDITED PAYMENT PROGRAM
RELATING TO VIOLATIONS OF NPDES PERMIT, SAN SIMEON WWTP, 9245
BALBOA, SAN SIMEON, CA 93452 (WDR ORDER NO. R3-2007-0024, NPDES NO.
CA0047961, WDID NO. 3 400110001)**

Dear Mr. Grace:

This letter is to notify San Simeon WWTP (hereinafter "Permittee" or "you") of alleged violations of the California Water Code identified in the Central Coast Regional Water Quality Control Board's (Central Coast Water Board) water quality data system and to allow the Permittee to participate in the Central Coast Water Board's Expedited Payment Program to address liability which may be assessed pursuant to Water Code sections 13385 and 13385.1.

NOTICE OF VIOLATION:

Based on information in the California Integrated Water Quality System (CIWQS) as of October 20, 2009, the Central Coast Water Board's Assistant Executive Officer alleges that the Permittee has violated the effluent limitations, reporting violations, or Water Code provisions identified in the Notice of Violation (NOV) attached as Exhibit "A." The Permittee will have the opportunity to address the alleged violations as discussed below.

STATUTORY LIABILITY:

Subdivisions (h) and (i) of California Water Code section 13385 require the assessment of a Mandatory Minimum Penalty of \$3,000 for specified serious and chronic effluent limit violations. The Permittee is also potentially subject to discretionary administrative civil liabilities of up to ten thousand dollars (\$10,000) for each day in which the violation occurs, plus ten dollars (\$10) for each gallon discharged but not cleaned up in excess of 1,000 gallons. These mandatory minimum penalties and discretionary administrative civil liabilities may be assessed by a Regional Water Quality Control Board (Regional Water Board) or the State Water Board (collectively "the Water Boards"), beginning with

the date that the violations first occurred¹. The formal enforcement action that the Water Boards use to assess such liability is an administrative civil liability complaint, although the Water Boards may instead refer such matters to the Attorney General's Office for prosecution. If referred to the Attorney General for prosecution, the Superior Court may assess up to twenty-five thousand dollars (\$25,000) per violation. In addition, the Superior Court may assess up to twenty-five dollars (\$25) per gallon discharged but not cleaned up in excess of 1,000 gallons.

OFFER TO PARTICIPATE IN EXPEDITED PAYMENT PROGRAM:

The Permittee can avoid the issuance of a formal enforcement action and settle the alleged violations identified in the attached NOV by participating in the Central Coast Water Board's Expedited Payment Program. Details of the proposed settlement are described below and addressed in the enclosed documents.

To promote resolution of these violations, the Central Coast Water Board enforcement staff makes this Conditional Offer. The Permittee may accept this offer, waive the Permittee's right to a hearing, and pay the mandatory minimum penalty as indicated on Exhibit A, for the violations described in the NOV. If the Permittee elects to do so, subject to the conditions below, the Central Coast Water Board will accept that payment in settlement of any enforcement action that would otherwise arise out of the violations identified in the Notice of Violation. Accordingly, the Central Coast Water Board enforcement staff will forego issuance of a formal administrative complaint, will not refer the violations to the Attorney General, and will waive its right to seek additional discretionary civil liabilities for the violations identified in the Notice of Violation.

The Expedited Payment Program does not address liability for any violation that is not specifically identified in the Notice of Violation.

PERMITTEE'S OPTIONS FOR RESPONSE TO OFFER:

If you accept this offer, please complete and return the enclosed "Acceptance of Conditional Resolution and Waiver of Right to Hearing, (proposed) Order" (Acceptance and Waiver) on or before November 25, 2009. The Acceptance and Waiver will be held, pending a 30-day public notice period, and then will be counter-signed by the Executive Officer and returned to you with an invoice for payment.

If you contest some but not all of the violations identified in the attached Notice of Violation, the Permittee may elect to reserve the right to address the contested matters

¹ Please note that there are no statutes of limitation that apply to administrative proceedings to assess mandatory minimum penalties. See *City of Oakland v. Public Employees' Retirement System*, (2002) 95 Cal.App.4th 29, 48; 3 Witkin, Cal. Procedure (4th ed. 1996) Actions, §405(2), p. 510.) The Permittee has not been substantially prejudiced by the passage of time between the date(s) that Permittee reported the violations identified on Exhibit A and the date of this letter. The Permittee was aware of the violations at the time it reported them to the Regional Board. Regional Board staff's limited enforcement resources and competing enforcement priorities provide a rational explanation for the delay. In fact, the delay has actually benefited the Permittee because it extended the time before payment of the mandatory minimum penalties is due. For these reasons, any delay is not unreasonable.

penalty for each uncontested violation. If the Permittee chooses this option, please communicate with the staff contact identified below to discuss the mechanism for memorializing that election on or before the due date.

If the Permittee chooses to contest any of the violations alleged in the Notice of Violation, please identify the specific violation and the basis for the challenge (factual error, affirmative defense, etc.) on or before the due date. Central Coast Water Board staff will evaluate the contested violation and take one of two actions:

- 1) Central Coast Water Board staff will determine that the violation is not supported, expunge the alleged violation from the CIWQS database, take no further action against the Permittee for the alleged violation, and notify the Permittee of that determination;
- 2) Central Coast Water Board staff will determine that the alleged violation is validated, and will notify the Permittee of that determination. The Permittee will be given 30 days from the date of receipt of the Water Board staff determination to submit a supplemental Expedited Payment for those violations. If the Permittee chooses not to make a payment in response to the determination, the Permittee should expect to be contacted regarding formal enforcement action that will be initiated with regard to the contested violations. In a formal enforcement action, the liability amount sought and/or imposed may exceed the liability amount set forth in this Conditional Offer. Moreover, the cost of enforcement is a factor which can be considered in assessing the liability amount.

CONDITIONS FOR WATER BOARD ACCEPTANCE OF RESOLUTION:

Federal regulations require the Central Coast Water Board to publish and allow the public 30 days to comment on any settlement of an enforcement action addressing NDPEs permit violations (40 C.F.R. section 123.27(d)(2)(iii)). Upon receipt of the Permittee's Acceptance and Waiver, Central Coast Water Board enforcement staff will publish a notice of the proposed resolution of the violations.

If no comments are received within the 30-day period, and unless there are new material facts that become available to the Central Coast Water Board, the Executive Officer will execute the Acceptance and Waiver as a stipulated order assessing the uncontested mandatory minimum penalty amount pursuant to Water Code section 13385.

If, however, significant comments are received in opposition to the settlement, this Offer may be withdrawn. In that case, the Permittee's waiver pursuant to the Acceptance and Waiver will also be treated as withdrawn. In that case, the unresolved violations will be addressed in a liability assessment proceeding. At the liability assessment hearing the Permittee will be free to make arguments as to any of the alleged violations, and the Permittee's agreement to accept this conditional offer will not in any way be binding or

used as evidence against the Permittee. The Permittee will be provided with further information on the liability assessment proceeding.

In the event the Acceptance and Waiver is executed by the Executive Officer, payment of the assessed amount shall be due and payable to the Central Coast Water Board as specified on the invoice that will accompany the Permittee's receipt of the notice of the Executive Officer's execution. The payment period is 30 days. Failure to pay the penalty within the required time period may subject the Permittee to further liability.

OPPORTUNITY FOR SUPPLEMENTAL ENVIRONMENTAL PROJECT OR COMPLIANCE PROJECT IN LIEU OF ADMINISTRATIVE LIABILITY

In lieu of the payment of all or a portion of the mandatory minimum penalties, the Permittee may be able to fund a supplemental environmental project as defined in the State Water Board's Enforcement Policy or a compliance project pursuant to Water Code section 13385(k) if it can demonstrate status as a publicly owned treatment works serving a small community with a financial hardship. If the Permittee wishes to discuss either of these options, please speak with the contact person identified in this correspondence.

CONTACT PERSON

Should you have any questions about the Notice of Violation or the Conditional Offer, please contact **Sandy Cheek** at **(805) 542-4633** regarding this matter.

Sincerely,


Michael J. Thomas
Assistant Executive Officer

Encl. – Exhibit "A" - Notice of Violation
Acceptance of Conditional Resolution
and Waiver of Right to Hearing; (Proposed) Order

Exhibit "A"
San Simeon CSD
San Simeon WWTP

NOTICE OF VIOLATIONS (1 January 2008 – 30 September 2009)
MANDATORY MINIMUM PENALTIES WITHOUT ENFORCEMENT

The Enforcement Staff of the Regional Water Quality Control Board, Central Coast Region has reviewed information submitted by this facility to determine whether the discharger is subject to mandatory minimum penalties (MMPs) pursuant to subdivisions (h) and (i) of California Water Code section 13385. The following table lists this facility's alleged violations of subdivisions (h) and (i) of California Water Code section 13385, from January 1, 2008, through September 30, 2009, which have not been subjected to the assessment of MMPs by the Water Board. Final calculation of MMP amounts owed and descriptions of the abbreviations that appear in the table are also listed below. For additional information about the alleged violations listed in the table, please refer to the SWRCB Public Reports webpage http://www.waterboards.ca.gov/water_issues/programs/ciwqs/publicreports.shtml; choose the "MMP Report" link located under the "Enforcement Reports" category. Once in the Public Reports search page, enter the search criteria that correspond to your facility to access the list of violations.

Violation ID	Occurred Date	Type	MMP Type	Violation Description
735611	1/12/2008	Serious	CAT2	Chlorine residual limit is 0.93 mg/L and reported value was 2.2 mg/L.
765209	2/3/2008	Serious	CAT2	Chlorine residual limit is 0.93 mg/L and reported value was 1.80 mg/L.

Mandatory Minimum Penalty Amount Owed for Effluent Violations

(2 Serious Violations + 0 Non-Serious Violations) × \$3,000 = \$6,000 to the Cleanup & Abatement Account

Mandatory Minimum Penalty Amount Owed for Reporting Violations

(0 Late Reporting Violations + 0 Deficient Reporting Violations) × \$3,000 = \$0 to the Cleanup & Abatement Account

Definition of Acronyms & Abbreviations

CIWQS	California Integrated Water Quality System database used by the Water Boards to manage violation and enforcement activities.
Violation ID	Identification number assigned to a violation in CIWQS.
Occurrence Date	Date that a violation actually occurred. For continuing violations, such as a monthly average, the last day of the reporting period is used. If the occurrence date is unknown, the date is entered as the day it was first discovered by staff, the Discharger, or a third party. For deficient or late reports, the occurrence date is the day after the report was due.
Type	Classification of a violation. Two types of violations relate to MMPs: 1) Late Reporting Violations (LREP, DREP) 2) Effluent Violations (ATOX, CTOX, CAT1, CAT2, OEV)
LREP	Late reporting violation. Every 30 days a report is late counts as one late reporting violation.
DREP	Deficient reporting violation. This will only result in an MMP if the report is so deficient as to make determination of compliance impossible for that reporting period.
DMR	Discharge Monitoring Report
ATOX	Violation of an acute toxicity effluent limitation.
CTOX	Violation of a chronic toxicity effluent limitation.
CAT1	Violation of an effluent limitation for a Group I pollutant by more than 40%.
CAT2	Violation of an effluent limitation for a Group II pollutant by more than 20%.
OEVI	Violation of any constituent-specific effluent limitation not included in Group I or Group II.
MMP	mandatory minimum penalty
MMP Type	Classification of the type of MMP violation.
CHRON	Chronic violation as defined by California Water Code section 13385 (i). To be counted as a chronic violation, there must be 3 preceding violations within a 180 day period. The fourth non-serious violation that occurs within the 180 period is an MMP violation.

SIG	Serious violation as defined by California Water Code section 13385 (h). Waste discharge exceeds the effluent limitation for a Group I pollutant by 40% or more (CAT1), or a Group II pollutant by 20% or more (CAT2). Also defined by California Water Code section 13385.1 as a failure to file a discharge monitoring report pursuant to Section 13383 for each period of 30 days following the deadline for submitting the report, if the report is designed to ensure compliance with limitations contained in waste discharge requirements that contain effluent limitations.
Violation Description	Narrative description of the violation.
M	Effluent exceeds limit for monthly reporting period.
Q	Effluent exceeds limit for quarterly reporting period.
S	Effluent exceeds limit for semi-annual reporting period.
A	Effluent exceeds limit for annual reporting period.
IM	Effluent exceeds instantaneous maximum limitation.
DM	Effluent exceeds daily maximum limitation.
AW	Effluent exceeds average weekly limitation.
AM	Effluent exceeds average monthly limitation.
2Q	2 nd Quarter

Expedited Payment Letter R3-2009-0071
NPDES Permit No. R3-2007-0024

**ACCEPTANCE OF CONDITIONAL RESOLUTION
AND WAIVER OF RIGHT TO HEARING; (proposed) ORDER**

SAN SIMEON WWTP
EPL R3-2009-0071
NPDES Permit No. R3-2007-0024

By signing below and returning this Acceptance of Conditional Resolution and Waiver of Right to Hearing (Acceptance and Waiver) to the Central Coast Regional Water Quality Control Board (Central Coast Water Board), San Simeon WWTP (Permittee) hereby accepts the "Offer to Participate in Expedited Payment Program" and waives the right to a hearing before the Central Coast Water Board to dispute the allegations of violations described in the Notice of Violation (NOV) which is attached hereto as Exhibit "A" and incorporated herein by reference.

The Permittee agrees that the NOV shall serve as a complaint pursuant to Article 2.5 of the Water Code and that no separate complaint is required for the Central Coast Water Board to assert jurisdiction over the alleged violations through its Enforcement Staff. The Permittee agrees to pay the penalties authorized by California Water Code section 13385, as indicated on the attached invoice (Expedited Payment Amount), which shall be deemed payment in full of any civil liability pursuant to the Water Code sections 13385 and 13385.1 that otherwise might be assessed for the violations described in the NOV. The Permittee understands that once the Acceptance and Waiver is executed by the Executive Officer of the Central Coast Water Board, the full payment required by the deadline set forth on the attached invoice is a condition of this Acceptance and Waiver. The Permittee shall pay the Expedited Payment Amount by check payable to the SWRCB Cleanup and Abatement Account, with the NPDES number noted on the check. The payment shall be submitted to the Central Coast Water Board as specified on the enclosed invoice.

The Permittee understands that this Acceptance and Waiver does not address or resolve liability for any violation that is not specifically identified in the Notice of Violation.

Upon execution by the Permittee, the Acceptance and Waiver shall be returned to:

Harvey Packard
Enforcement Coordinator
Central Coast Water Board
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401

Expedited Payment Letter R3-2009-0071
NPDES Permit No. R3-2007-0024

The Permittee understands that federal regulations set forth at title 40, Code of Federal Regulations, section 123.27(d)(2)(iii) require the Central Coast Water Board to publish notice of and provide at least 30 days for public comment on any proposed resolution of this enforcement action. Accordingly, this Acceptance and Waiver, prior to execution by the Executive Officer of the Central Coast Water Board, will be published as required by law for public comment.

If no comments are received within the notice period that cause the Executive Officer to reconsider the Expedited Payment Amount, the Executive Officer will execute the Acceptance and Waiver.

The Permittee understands that if significant comments are received in opposition to the Expedited Payment Amount, the Central Coast Water Board Enforcement Staff's offer to resolve the violations set forth in the NOV may be withdrawn. In that circumstance, the Permittee will be advised of the withdrawal and an administrative civil liability complaint may be issued and the matter may be set for a hearing before the Central Coast Water Board. For such a liability hearing, the Permittee understands that this Acceptance and Waiver executed by the Permittee will be treated as a settlement communication and will not be used as evidence in that hearing.

The Permittee understands that once the Acceptance and Waiver is executed by the Executive Officer of the Central Coast Water Board, the full payment required by the deadline set forth on the attached invoice is a condition of this Acceptance and Waiver.

I hereby affirm that I am duly authorized to act on behalf of and to bind the Permittee in the making and giving of this Acceptance and Waiver.

(Name of Permittee)

By: _____
(Signed Name)

(Date)

(Printed or typed name)

(Title)

Expedited Payment Letter R3-2009-0071
NPDES Permit No. R3-2007-0024

IT IS SO ORDERED PURSUANT TO WATER CODE SECTION 13385

Date: _____

By: _____
Roger W. Briggs
Executive Officer
Central Coast Regional Water Quality Control Board

Task Order 8-09

SAN SIMEON COMMUNITY SERVICES DISTRICT ("DISTRICT")

AND

AECOM ("CONSULTANT")

This Task Order is issued by DISTRICT and accepted by CONSULTANT pursuant to the mutual promises, covenants, and conditions contained in the Agreement between the above named parties dated the 8th day of February, 2005.

I. PURPOSE

The purpose of this Task Order is to obtain engineering and consulting services to evaluate the feasibility of constructing a small-scale recycled water production facility:

II. SCOPE OF WORK

See Exhibit A (attached).

III. PROJECT SCHEDULE

See Exhibit A (attached).

IV. PROJECT BUDGET

Compensation for scope of services described herein will be made on a time and materials basis with a budget maximum of \$15,601 which will not be exceeded without written authorization from the District (see attached fee schedule).

V. PAYMENT

CONSULTANT shall perform the proposed Scope of Work in accordance with the project budget estimate. Services shall be invoiced monthly on an accrued cost basis. Total fees shall not exceed the estimated fee of \$15,601 without additional written authorization from the District.

EFFECTIVE DATE

This Task Order No. 8-09 is effective as of the 14th day of Oct, 2009.

IN WITNESS WHEREOF, duly authorized representatives of the DISTRICT and of the CONSULTANT have executed this Task Order No. 8-09 evidencing its issuance by DISTRICT and acceptance by CONSULTANT.

AECOM

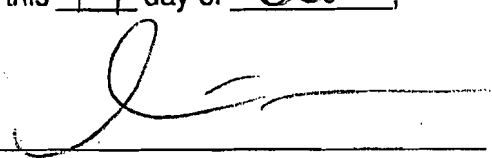
SAN SIMEON COMMUNITY SERVICES
DISTRICT

Accepted this 14th day of Oct,
2009

By: _____


Jon Hanlon, PE
Managing Engineer

By: _____



**San Simeon Community Services District
Small-scale Recycled Water Production Feasibility Study**

Project Understanding

In October of 2006, Boyle Engineering (now AECOM) submitted the WWTP Tertiary Treatment Upgrade Preliminary Design Report which evaluated options for producing recycled water to improve effluent quality and provide an opportunity for future irrigation uses. Based on input from the District and regulatory agencies, two alternatives for producing tertiary treated recycled water for the plant's permitted capacity of 200,000 gpd were developed. Since an initial community survey identified minimal demand for recycled water, and construction of tertiary filtration facilities and additional equipment necessary for Title 22 compliance sized for the permitted plant capacity could cost between \$595,000 and \$647,000 (2006 PDR Opinion of Probable Construction Cost), it was recommended that purchase and installation of additional equipment for producing Title 22 compliant recycled water for unrestricted use (approximately \$86,000 of the estimated costs) be deferred until beneficial uses for recycled water are developed.

Recent water supply shortages have resulted in implementation of water conservation measures which prohibit certain uses of SSCSD potable water, including any irrigation of outdoor vegetation. Based on our discussion with District Staff, local hotels and business may now have increased interest in using recycled water for irrigation of existing landscaping. The District wishes to investigate the feasibility of constructing a small-scale recycled water production facility to reclaim a portion of WWTP effluent for irrigation uses. Reclaimed water for beneficial uses such as landscape irrigation must be treated to the appropriate standard and distributed in accordance with the Health and Safety Code, the Water Code, and Titles 22 and 17 of the California Code of Regulations. AECOM proposes the following scope of work to identify applicable regulatory requirements, determine necessary measures for meeting these requirements, and evaluate potential recycled water production and distribution alternatives.

Scope of Services

Task 1 – Regulatory Requirements for Small-scale Recycled Water System

To assist the District in determining the feasibility of constructing and operating a small-scale recycled water production and distribution system, AECOM will review local, state, and federal regulations pertaining to production, distribution, and application of recycled water for landscape irrigation and investigate the measures necessary for implementing a small-scale recycled water production and distribution system. AECOM will identify treatment process requirements, water quality standards, and restrictions pertaining to production, distribution and use of the recycled water in a memorandum to the District. AECOM would also summarize requirements for the SEP program to assist the District in evaluating the possibility of using the District's Supplemental Environmental Project (SEP) fund for the project.

Task 2 – Small-scale Recycled Water System Conceptual Design and Cost Opinion

Upon completion of Task 1 and with direction from the District, AECOM will estimate constituent loading based on recent WWTP records and desired recycled water production rate. It is assumed the District will provide a design capacity (flow rate) or adequate recycled water demand information for determining an appropriate design capacity. Constituent loading, flow rate, and the regulatory requirements identified as part of Task 1 will be used to evaluate treatment processes and distribution facilities, and identify necessary plant improvements. Up to three alternatives will be evaluated in a technical memorandum to the District. AECOM will develop conceptual cost opinions for the evaluated alternatives and prepare conceptual design drawings showing treatment alternatives and integration with existing plant processes.

Deliverables will include:

Task 1

- ☐ Regulatory Requirements for Small-scale Recycled Water System Memorandum

Task 2

- ☐ Conceptual Design Memorandum
- ☐ Concept design drawings (plan and profile of treatment alternatives)
- ☐ Opinion of Probable Construction Costs

Budget for Engineering Services

The attached Project Budget has been prepared based on AECOM's Fee Schedule (Exhibit B) as attached. We propose to perform the scope of work outlined above on a time-and-materials basis with a not-to-exceed budget of \$15,601. Task 2 scope items would be performed only at the District's request, following review of the Task 1 Regulatory Requirements for Small-scale Recycled Water System Memorandum.

Budget San Simeon CSD Small-scale Recycled Water Production Feasibility Study	
Regulatory Requirements for Small-scale Recycled Water System Memorandum	\$3,861
Small-scale Recycled Water System Conceptual Design Memorandum and Cost Opinion	\$11,740

Project Budget

Small-scale Recycled Water Production Feasibility Study

San Simeon Community Services District

Task Description	Personnel Hours								Budget				
	Managing Engineer	Senior Engineer II	Senior Engineer	Associate Engineer	Assistant Engineer	Design CADD Operator	Clerical	Total Hours	Labor	Subconsultants	Other	Total Non-Labor	Total
<u>Task 1 - Regulatory Requirements Memorandum</u>													
Information gathering and review of regulations	1			10				11	\$ 1,425		\$ 114	\$ 114	\$ 1,539
Draft regulatory requirements memorandum	2			12				14	\$ 1,850		\$ 148	\$ 148	\$ 1,998
Project management				1				1	\$ 125		\$ 10	\$ 10	\$ 135
QC	1							1	\$ 175		\$ 14	\$ 14	\$ 189
								-	\$ -		\$ -	\$ -	\$ -
Subtotal	4	-	-	23	-	-	-	27	\$ 3,575	\$ -	\$ 286	\$ 286	\$ 3,861
<u>Task 2 - Conceptual Design and Cost Opinion</u>													
Flow analysis and constituent loading	2			6				8	\$ 1,100		\$ 88	\$ 88	\$ 1,188
Equipment research and coordination with vendors	4			24				28	\$ 3,700		\$ 296	\$ 296	\$ 3,996
Conceptual Design Technical Memorandum and Cost Opinions	4			12				16	\$ 2,200		\$ 176	\$ 176	\$ 2,376
Treatment System Conceptual Drawings	1			4		19		24	\$ 2,670		\$ 214	\$ 214	\$ 2,884
Project management				2				2	\$ 250		\$ 20	\$ 20	\$ 270
QC	4			2				6	\$ 950		\$ 76	\$ 76	\$ 1,026
								-	\$ -		\$ -	\$ -	\$ -
Subtotal	15	-	-	50	-	19	-	84	\$ 10,870	\$ -	\$ 870	\$ 870	\$ 11,740
Total	19	-	-	73	-	19	-	111	\$ 14,445	\$ -	\$ 1,156	\$ 1,156	\$ 15,601

Amounts shown are fee.

AECOM

FEE SCHEDULE FOR PROFESSIONAL SERVICES
Effective January 1, 2009

Engineers, Planners, Architects, Scientists:

Principal	\$200.00 per hour
Managing Engineer	\$175.00 per hour
Senior II	\$160.00 per hour
Senior I	\$145.00 per hour
Associate	\$125.00 per hour
Assistant	\$110.00 per hour
Construction Observer	\$110.00 per hour

Technical Support Staff:

Design/CADD Supervisor	\$120.00 per hour
Senior Designer/Design CADD Operator	\$105.00 per hour
Drafter/CADD Operator	\$100.00 per hour
Clerical/General Office	\$72.00 per hour

General Project Expenses ⁽¹⁾

8% of Labor

Direct Project Expenses

Other Reproduction (8-1/2 x 11/11x17 Color)	\$1.15/1.50 per page
Plan Sheet Printing – In House Bond / Mylar	\$3.00/7.00 per sheet
Subcontracted Services/Reproduction	Cost + 10%
Subcontracted or Subconsultant Services	Cost + 10%
Auto Mileage for Construction Phase Services	\$0.60 per mile
Travel & Subsistence (other than mileage)	Cost
Miscellaneous Supplies/Services	Cost + 10%

If authorized by the Client, an overtime premium multiplier of 1.5 may be applied to the billing rate of hourly personnel who work overtime in order to meet a deadline which cannot be met during normal hours.

Applicable sale taxes, if any, will be added to these rates. Invoices will be rendered monthly. Payment is due upon presentation.

Fee schedule is subject to change.

⁽¹⁾ Includes mail, telephone, fax, office photo copies, personal computers and mileage (except as noted).